IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 128 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI and
MR.JUSTICE R.BALIA.

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

KRISHNA METAL INDS.

Versus

HM ALGOTAR OR HIS SUCCESSOR IN HIS OFFICE

Appearance:

MR SN SOPARKAR for Petitioner

MR M.H. JOSHI FOR MR MANISH R BHATT for Respondent No. 1

CORAM : MR.JUSTICE R.K.ABICHANDANI and
MR.JUSTICE R.BALIA.

Date of decision: 17/02/97

ORAL JUDGEMENT

(per R.K.Abichandani, J)

1. The petitioner assessee has challenged the notices dated 15.3.1996 and 18.4.1996 at Annexure A colly. issued under Section 148 of the Income Tax Act, 1961 in respect of the assessment year 1989-90, on the

ground that they are illegal and without jurisdiction being beyond the period of limitation prescribed by the Act.

2. In respect of the assessment year 1989-90, the Income Tax Officer had assessed the petitioner by his order dated 16.3.1990 made under Section 143(3) of the Act and allowed deduction of Rs.1,31,800/- under Section 32AB of the Act, stating in the order that it was being allowed as per the audit report in part III. The impugned notices at Annexure A colly. were issued on 15.3.1996 and 18.4.1996 for the assessment years 1988-89 and 1989-90 respectively under Section 148 of the said Act. No reasons were however communicated in the notice or along with it. Therefore, one of the grievances made by the petitioner was about the reasons on the basis of which the notices were issued. The respondent in his affidavit in reply filed in this petition has placed on record the reasons which prompted the issuance of the said notices. It is recorded therein that in the return of income filed by the assessee on 26.10.1989 a total income of Rs.4,28,716/- was declared and that the assessment was finalised, at the total income of Rs.4,34,852 under Section 143(3) of the Act. It is then recorded that on perusal of the statement of income filed along with the return of income it was noticed that a deduction of Rs.1,31,800 was claimed by the assessee under Section 32AB, which was allowed by the Income Tax Officer. It is then stated that on perusal of the audit report part III, it was noticed that the assessee had deposited Rs.1,00,000 with the IDBI in Account No.695. Therefore, so far as that amount is concerned, there is no dispute that the amount was deposited as per the scheme, so as to make it permissible for deduction in accordance with the provisions of Section 32AB.

3. The Assistant Commissioner of Income Tax has further stated in the reasons that he has recorded, that during the year relevant to assessment year 1989-90, the assessee had withdrawn the investment reserve of Rs.1,10,931/- for purchase of new machinery but he had purchased machinery worth Rs.31,800/-. Therefore, balance of Rs.79,131/- was required to be verified and if need be, the same was required to be taxed. It was also stated that the purchase of new machinery for Rs.31,800/would not qualify for deduction under Section 32AB, and therefore, that amount was allowed in excess under Section 32AB of the Act, since the purchase was made out of the reserve fund.

4. There is no dispute about the fact that in the

assessment order the deduction in respect of Rs.1,31,800/- was allowed by the Income Tax Officer under Section 32AB as per the audit report in part III. Therefore, the particulars of audit report filed by the assessee were before the Income Tax Officer when he made the assessment order under Section 143(3) of the Act. Both the sides have referred to a copy of the audit report which was the subject matter of the said assessment. In the balance sheet, there is a reference to investment allowance having been utilised to the tune of Rs.1,10,931/-. The amount of Rs.31,800/- said to have been utilised for purchase of machinery is separately stated while claiming deductions under Section 32AB. There is no indication that new machinery was purchased from the amount of investment allowance of Rs.1,10,931/- which is shown to have been utilised.

5. The proviso to Section 147 lays down that where an assessment under sub section (3) of Section 143 or Section 147 has been made for the relevant assessment year, no action shall be taken under Section 147 after the expiry of four years from the end of relevant assessment year, unless any income chargeable to tax has escaped assessment for such assessment year by reason of the failure on the part of the assessee to make a return under Section 139 or in response to a notice issued under section 142(1) or Section 148 or to disclose fully and truly all material facts necessary for his assessment, for that assessment year. The impugned notice does not state that the assessee had not disclosed fully and truly all material facts necessary for his assessment for the relevant assessment year. The concerned officer has not recorded any satisfaction to that effect which was a precondition to the exercise of his jurisdiction for reopening the assessment, as the period of four years ended on 31.3.1994 and thereafter it was not open to the said authority to initiate action unless the case fell within the terms of the proviso. From the impugned notices that have been issued it appears that the primary facts were disclosed, but, the concerned authority has resorted to inferences that the balance amount of Rs.79,131/- from the total amount of Rs.1,10,931/- was not utilised for the purpose for which it was withdrawn and further that, the machinery worth Rs.31,800 was purchased out of the amount of Rs.1,10,931/-. According to us, this enquiry could have been made on the basis of the material already disclosed before the Income Tax Officer while making the assessment under Section 143(3) of the Act. It is a settled legal position as held by the Supreme Court in Calcutta Discount Co. Ltd v. Income Tax Officer reported in 41 ITR 191, that from the

primary facts in his possession, whether on disclosure by the assessee or discovered by him on the basis of the facts disclosed, or otherwise, the assessing authority had to draw inferences as regards certain other facts; and ultimately from the primary facts and the further facts inferred therefrom, the authority had to draw appropriate legal inferences, to ascertain on a correct interpretation of the taxing enactment the proper tax to be levied. If there were in fact some reasonable grounds for the ITO to believe that there had been any nondisclosure as regards any primary fact which could have a material bearing on the question of under assessment that would be sufficient to give jurisdiction to the Income Tax Officer to issue the notices for opening the case. The Supreme Court held that the duty of the assessee does not extend beyond the full and truthful disclosure of all primary facts and once they before the assessing authority, he requires no further assistance by way of disclosure. It is for the assessing authority to decide what inferences of facts can be reasonably drawn and what legal inferences have ultimately to be drawn. Applying the ratio of this decision to the facts of the present case, we are satisfied that there was no ground on the basis of which the authority could have arrived at the conclusion that there was a non-disclosure of material facts. There are no reasons disclosed which could warrant the exercise of powers under Section 147 of the Act after a lapse of four years, from end of the relevant assessment year.

6. We may also refer to the decision of the Supreme Court in Parashuram Pottery Works Co. Ltd. v. Income-tax Officer, Circle I, Ward A, Rajkot reported in 106 ITR 1 in which the Supreme Court following the principles laid down in its earlier decision in Calcutta Discount Co. vs. ITO (supra) observed that any remissness on the part of the assessing authority can only be at the cost of the national exchequer and that there must be a point of finality in all legal proceedings, so that stale issues are not reactivated beyond a particular stage and the controversies are set at rest.

7. Under the above circumstances, we are of the view that the impugned notices could not have been issued after the period of four years from the end of the relevant assessment year had lapsed since the conditions for exercise of power beyond four years contemplated by the proviso to Section 147 did not exist. The impugned notices are therefore, quashed as being illegal and without jurisdiction. Rule is made absolute accordingly, with no order as to costs.

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